



CENTER FOR FOOD SAFETY

February 19, 2014

SENT VIA Online Submission Form

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

RE: Freedom of Information Act Request

To the National Freedom of Information Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. Consistent with this mission and pursuant to 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552, as well as 40 C.F.R. § 152.119(c) (providing that “within 30 days after registration, the data on which the Agency based its decision to register the product will be made available for public inspection, upon request, in accordance with the procedures in 40 C.F.R. Part 2), I, Zachary Marker, on behalf of CFS, respectfully request the following information:

Any and all documents related to the data on which EPA based its decision to register the Clothianidin and Thiamethoxam pesticide products listed in Appendix A and Appendix B, attached.

“All documents” includes, but is not limited to, all applicants’ lists of data requirements, the methods used to demonstrate compliance for each data requirement, citations of specific studies in EPA’s possession, permits, permit applications, notifications, agreements, contracts, correspondence, minutes, memoranda, maps, plans, drawings, emails, reports, databases, and notes. This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

CFS requests this information in light of the President’s “Memorandum for the Heads of Executive Departments and Agencies” dated January 21, 2009, which states:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails...In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era

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of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

Exec. Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). This request is being sent to the EPA National FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

REQUEST FOR FEE WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. The present disclosure is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

A. The subject of the disclosure concerns “the operations and activities of the government.”

The requested information pertains to EPA’s registration of Clothianidin and Thiamethoxam pesticides. The Office of Pesticide Programs (OPP) is the division of the EPA with regulatory oversight over pesticide registration in the United States through the implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Pesticide Registration Improvement Renewal Act (PRIA 2). Moreover, EPA’s FIFRA implementing regulations specifically provide for public inspection of the requested data. 40 CFR § 152.119(c). It is irrefutable that OPP/EPA’s regulatory control pesticide registrations are clearly identifiable operations of the government. This disclosure will demonstrate to the public at large the nature of OPP/EPA’s analytic process, conclusions, and generally held knowledge concerning the registration of several Clothianidin and Thiamethoxam pesticides.

B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.

As discussed in the previous section, the present disclosure will provide the public a better understanding of the nature of OPP/EPA’s oversight and control over pesticides, specifically several registered Clothianidin and Thiamethoxam pesticides. CFS is a nonprofit organization that informs, educates and counsels the public —via legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, *Food Safety Now!*— on the harm done to human health, animal welfare, and the environment by industrial agriculture. Accordingly, CFS is an effective vehicle to disseminate information on pesticide use and its impact on the environment.

Simultaneously, this FOIA will help CFS fulfill its well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which the FOIA stands.

II. Obtaining the information is of no commercial interest to CFS.

CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See, e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA.

Based upon the foregoing, CFS requests that this FOIA be classified within EPA’s fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact us to discuss the proper scope of the response. If any exemption from FOIA’s disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document that may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to the San Francisco address on the letterhead. Please call Zachary Marker at (415) 826-2770 or email zmarker@centerforfoodsafety.org if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Z. Marker', is positioned above a horizontal line.

Zachary Marker
Legal Fellow

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